



Frequently Asked Questions About the Proposed Designation of Critical Habitat for Peirson's Milk-Vetch

Q. What is critical habitat?

A term defined in the Endangered Species Act of 1973, as amended (Act), critical habitat refers to specific areas that are essential for the conservation of a threatened or endangered species and that may require special management consideration or protection. Critical habitat areas are determined using the best available scientific and commercial information about the physical and biological needs of the species.

These needs include:

- P space for individual and population growth, and for normal behavior;
- P food, water, light, air, minerals or other nutritional or physiological needs;
- P cover or shelter;
- P sites for breeding, reproduction, and rearing of offspring; and
- P habitat that is protected from disturbance or is representative of the historical geographic and ecological distribution of a species.

Q. What are the primary habitat components essential to the conservation of *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch)?

Habitat components essential to the conservation of the plant consist of, but are not limited: (1) Intact, active dunes systems (defined as sand areas subject to sand-moving winds resulting in the formation of natural expanses of slopes and swales) within the historic range of the plant), characterized by substrates of Rositas fine sands of sufficient depth to promote the plant and discourage creosote bush scrub; and wind-formed slopes of less than 30 degrees, but generally less than 20 degrees.

Areas identified and proposed as critical habitat for Peirson's milk-vetch are restricted to interior portions of the Algodones dunes and are occupied by the plant and/or its seed bank..

Q. How did the Service determine what areas are essential to the conservation of the Peirson's milk-vetch?

To determine areas essential to the conservation of Peirson's milk-vetch, the Service utilized existing scientific and commercial information about the plant and its habitat. The general range of the plant was determined by utilizing survey information conducted by BLM, Westec, and Thomas Olsen and Associates. This initial review of survey data provided the basis for determining presence or absence of the plant in the Algodones Dunes. We also relied on this survey data to develop a method to identify areas essential to the conservation of the plant. The analysis of available data allowed us to extrapolate values for four variables, as follows: (1) the presence or absence of standing plants; (2) the abundance of Peirson's milk-vetch; (3) the frequency of occurrence of the plant; and (4) the number of associated rare psammophytic plant taxa present.

Based on the results, we were able to develop a map showing the portions of the Algodones Dunes essential to the conservation of the plant. Areas proposed as critical habitat are designed to provide sufficient habitat for the plant to maintain self-sustaining populations.

Q. Why is the Service proposing critical habitat for Peirson's milk-vetch?

At the time we listed Peirson's milk-vetch under the Act, we did not designate critical habitat. Two lawsuits were filed challenging our decision not to designate critical habitat at the time we listed the plant under the Act. One lawsuit was filed by the Center for Biological Diversity and the California Native Plant Society, a second lawsuit was filed by the Building Industry Legal Defense Foundation. As a result of the lawsuits, the U.S. District Court for the Southern District of California ordered the Service to publish a proposed rule to designate critical habitat for Peirson's milk-vetch on or before July 28, 2003.

Q. Does the designation of critical habitat create preserves?

No. A critical habitat designation does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands and will not result in closure of the area to all access or use.

Q. Does critical habitat substantially contribute to the conservation of species?

The Department of the Interior has determined that the designation of critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. Currently, only 306 species, or 25 percent of the 1,211 listed species in the United States that are under the Service's jurisdiction have designated critical habitat. The habitat needs of all 1,211 species are addressed through conservation mechanisms such as listing under the Act, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permitting process. We believe it is these measures that may make the difference between extinction and survival for many species.

Q. How does the proposed designation of critical habitat affect the Bureau of Land Management's Draft Recreation Area Management Plan (RAMP) for the Algodones Dunes?

The proposed designation of critical habitat will not affect the finalization of the RAMP for the Algodones Dunes.

In April 2003, the Service issued a Biological Opinion to BLM regarding their draft RAMP. The Opinion determined that implementation of the RAMP would not jeopardize the continued existence of Peirson's milk-vetch in the Algodones Dunes within the next four years. In conjunction with the RAMP and incorporated into the Biological Opinion, BLM has set forth a plan to monitor and study the plant including: (1) dune-wide monitoring; (2) dune-wide monitoring and calibration of OHV use patterns; (3) two experimental studies on the effects of OHVs on the plant; (5) modeling of Peirson's milk-vetch populations under various management scenarios; and (6) an implementation schedule.

BLM also proposes to establish triggers to activate alternative management actions when public visitation exceeds target levels in one of the areas managed within the RAMP, and to reinstate consultation with the Service if: (1) population levels of Peirson's milk-vetch in individual management areas within the Algodones Dunes fall to 50 percent of baseline in a comparable rainfall year (at or about the long-term mean); or (2) after the accumulation of four years of

monitoring information.

Q. Will the proposed designation of critical habitat require BLM to reinitiate consultation with the Service?

The proposed designation of critical habitat does not require consultation with the Service, however, Federal agencies undertaking, permitting, or funding activities in areas proposed as critical habitat may request to conference with the Service on the RAMP.

Although the consultation on the draft RAMP did not analyze the proposed action in the context of a final designation of critical habitat, we expect a similar approach would be used to determine whether implementation of the RAMP would result in destruction or adverse modification of critical habitat.

Q. What is a conference?

If an action being undertaken, funded, or permitted by a Federal agency may affect the proposed critical habitat, the agency may request to conference with the Service to ensure the action will not adversely modify proposed critical habitat. At the conclusion of a conference, the Service issues a conference report or a conference opinion. A conference report contains recommendations the Federal action agency should take to reduce adverse effects on the species' proposed critical habitat.

A conference opinion includes recommendations to avoid adverse modification of proposed critical habitat, but does not provide incidental take coverage. Once critical habitat is designated, a conference opinion may be adopted by the Service as a biological opinion if it is determined that action will not adversely modify critical habitat.

Although conference reports and conference opinions are only advisory, the implementation of the recommendations can avert potential future conflicts once critical habitat is actually designated.

Q. My private property is included in the proposed critical habitat boundaries, what happens now?

The proposed designation of critical habitat does not affect private or State landowners unless they are undertaking a project on their land that requires Federal funding, permits, or authorization.

If a project that requires Federal funding, permitting, or authorization is planned in an area proposed as critical habitat, and if the agency determines that the project may affect the coastal Peirson's milk-vetch or its proposed critical habitat, then the agency responsible for providing the funding or permit would have to conference with the Service.

Q. Will I be able to comment on proposed critical habitat for Peirson's milk-vetch?

Yes. The Service wants to ensure that any final action resulting from this proposal is as accurate and as effective as possible. The Service is actively soliciting comments or suggestions from the public, other government agencies, the scientific community, industry representatives, and any other interested party. In particular, The Service are seeking comments regarding:

- (1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of

- designation will outweigh any threats to the species due to designation;
- (2) Specific information on the amount and distribution of Peirson's milk-vetch and its habitat, and which habitat or habitat components are essential to the conservation of the species and why;
 - (3) Land use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;
 - (4) Any foreseeable economic or other potential impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities;
 - (5) Economic and other values associated with designating critical habitat for Peirson's milk-vetch such as those derived from non-consumptive uses (e.g., hiking, camping, photography, improved air quality, increased soil retention, and "existence values,"); and
 - (6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

Written comments and information on the proposed designation of critical habitat for the Peirson's milk-vetch will be accepted through 5:00 p.m. on October 6, 2003, and should be sent to Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009. Requests for a public hearing must be received by the Carlsbad office no later than 5:00 p.m. on September 19, 2003.

Comments may also be submitted by electronic mail (e-mail). You may e-mail comments on the proposed rule to FW1PMV@r1.fws.gov. Please submit e-mail comments in ASCII file format and avoid the use of special characters or encryption. Please also include "Attn: RIN 1018-AI77" in the subject line of your message and your name and address in the body of your message. If you do not receive a confirmation from the system that we received your message, contact the Carlsbad Fish and Wildlife Office directly at 760/431-9440.

All comments received, either written or oral, are given equal weight and will be considered during the decision-making process. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office.